

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

OTIS MICHAEL BRIDGEFORTH,

Plaintiff,

v.

DECISION & ORDER

09-CV-6162P

LIEUTENANT J. MCKEON, et al.,

Defendants.

On August 25, 2011, this Court entered a decision and order provisionally granting defendants' motion to dismiss under Rule 41 of the Federal Rules of Civil Procedure unless plaintiff provided an affidavit by September 16, 2011, explaining his failure to appear for a deposition scheduled in December 2010 and affirming his desire to pursue this litigation. (Docket # 40). Plaintiff did so on September 15, 2011. (Docket # 41). Specifically, plaintiff states that he could not attend the December 2010 depositions because he was in custody in Delaware's New Castle County Adult Probation and Parole facility. (*Id.*).

Accordingly, on the basis of plaintiff's representation, I find that dismissal is not warranted. Defendants' motion to dismiss pursuant to Rule 41 (**Docket # 36**) is **DENIED**. An amended scheduling order shall issue separately.

IT IS SO ORDERED.



MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
September 20, 2011